

## MEMORANDUM OF LAW

DATE: September 28, 1993

TO: Councilmember Judy McCarty

FROM: City Attorney

SUBJECT: Diversity Letter Sent to Employees on June 5, 1993

Your memorandum dated July 28, 1993, indicates that several of your constituents have expressed concerns about the legality of City employees being encouraged to participate and wear City uniforms at the Gay and Lesbian Pride Parade.

California Government Code section 3206 (participation in political activities while in uniform) states that "no officer or employee of a local agency shall participate in political activities of any kind while in uniform." The legal issue posed is whether uniformed participation by City employees in the Gay and Lesbian Pride Parade of July 17, 1993, constituted "participation in political activity" which is prohibited by Government Code section 3206.

The subject of "political activity" in Government Code section 3200, et. seq., has been discussed in several appellate cases. "The Supreme Court made clear the prohibited political conduct occurs any time a public agency 'takes sides' in an election issue not just when the public agency takes sides in favor of one party's candidate rather than another (citation omitted)." *California Common Cause v. Duffy*, 200 Cal. App. 3d 730, 748 (1989).

From the facts presented to us in the present case, participation in the parade did not involve an election. Moreover, the activity did not involve a political office, initiative, or ballot proposition. Under the facts of this case, the mere marching in a parade does not necessarily constitute political activity. City employees were asked to show support for a diversity program approved by the City Council and administered by the City Manager. Accordingly, we conclude wearing City uniforms at the parade of July 17, 1993 did not fall within the definition of "political activity" in Government Code section 3200, et. seq.

Your question about the extent to which City employees who

are supervisors and managers are required to participate in diversity training is a question which is referred to the City Manager for response.

JOHN W. WITT, City Attorney

By

Kenneth K. So

Chief Deputy City Attorney

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Attachments

cc Susan Golding, Mayor

Jack McGrory, City Manager

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